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By: Thomas J. Hagner, Esquire

LUCIANA BAKER

Plaintiff,

Vs.

THE HARTFORD LIFE INSURANCE COMPANY, and BLOOMBERG, LP – NEW YORK, ADMINISTRATOR OF THE BLOOMBERG LP LONG-TERM DISABILITY PLAN

Defendant,

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION NO. 08-cv-6382 (FLW)

PLAINTIFF'S RSPONSE TO DEFENDANT'S STATEMENT OF UNCONTESTED MATERIAL FACTS

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1. This statement is denied as being inaccurate. The exact job which Plaintiff held was that of a news producer/editor. (Plaintiff's Statement of Uncontested Material Facts, [hereinafter Plaintiff's Statement"] para. 7.)

2. This statement is admitted.

3. This statement is admitted.

4. This statement is admitted.

5. This statement is denied. See N.J.A.C. § 11:4-48.4.

6. This statement is admitted.

7. This statement is denied; Plaintiff ceased working due to a spinal condition.

8. This statement is admitted.

9. This statement is admitted.

10. This statement is admitted.

11. The characterization that Plaintiff became "very active" is not admitted. It is admitted that on recommendation of her doctors, Plaintiff participated in an exercise class in order to improve her medical condition. It is also denied that Plaintiff's level of activity had anything whatsoever to do with Hartford's denial of her claim.

12. This statement is admitted because Plaintiff did not require regular medication, all she required was the ability not to sit for prolonged periods of time.

13. This statement is admitted with the understanding that the significant improvement was the result of Plaintiff not having to sit for prolonged periods of time.

14. This statement is denied in that it represents a mischaracterization of Dr. Cooke's full report. To begin with, Dr. Cooke did not "predict" anything; rather, he offered a prognosis. Secondly, Dr. Cooke indicated that the Plaintiff's condition improved because she was no longer involved in prolonged sitting.

15. This statement is admitted. Specifically, Dr. Cooke opined that Plaintiff's improvement was "because she has been limiting any prolonged sitting since she has been out of work."

16. It is denied that the selective partial quotations represent an accurate characterization of Dr. Cooke's full report. Plaintiff relies upon the full report itself as an accurate expression of Dr. Cooke's opinion.

17. It is admitted that Dr. Cooke's report references a conversation with the Plaintiff where Plaintiff advised her that low back pain had improved and that Ms. Baker "directly relates this to the fact that she has not been doing prolonged sitting as required at her job at Bloomberg."

18. It is denied that Dr. Cooke's opinion was based solely on Plaintiff's description of her job.

19. This statement is admitted.

20. This statement is admitted.

21. It is denied that Plaintiff's inability to return to work was contrary to the restrictions recommended by Dr. Cooke; rather, it was consistent with those recommendations.

22. It is denied that the document proffered indicates that Bloomberg was able to accommodate Plaintiff's sitting restrictions. The document was submitted by Bloomberg on August 3, 2007 which was three weeks before Plaintiff submitted her information and almost four weeks before her primary treating doctor, Dr. Cooke, submitted his Attending Physician's Report establishing the medically recommended sitting restrictions.

23. This statement is denied. The information supplied by Dr. Cooke did not confirm that the medical restrictions and limitations could be accommodated by Bloomberg.

24. This statement is denied. Specifically, the exhibit proffered does not support the argument that "Bloomberg was able to accommodate those restrictions," i.e. the restrictions imposed by Dr. Cooke. In fact, the document relied upon predates Dr. Cooke's Attending Physician's Statement by almost four weeks.

25. This statement is admitted.

26. This statement is denied as stated; Plaintiff's claim was based upon symptoms she experienced as a result of her spinal condition.

27. This statement is admitted.

28. This statement is admitted.

29. This statement is admitted with the clarification that both Dr. Ma and Dr. Hsueh are medical doctors.

30. This statement is denied. To begin with, Plaintiff did not treat with a Dr. Wang, she treated with Dr. Wang Chung Hsueh. Moreover, her treatment was because of her pain not despite her pain.

31. This statement is admitted.

32. This statement is denied to the extent that it indicates that Dr. Cooke advised Hartford that Plaintiff could work ten hours a day indicating that her activity limitations was sitting no more than four hours; standing no more than four hours; and walking no more than two hours. This statement does not indicate that Dr. Cooke intended to combine the three limitations in order to equal a typical work day.

33. This statement is denied. With respect to sub-section A, Plaintiff claimed to be disabled as a result of a spinal condition, not a "back condition." With respect to Subsection C, which is also denied, the document proffered does not support the

contention that "Bloomberg confirmed that Plaintiff's job could be modified so that she could avoid prolonged sitting." In fact the proffered document pre-dated Plaintiff's submission of medical evidence by almost four weeks.

34. It is admitted that Hartford made its decision based upon a document submitted by Bloomberg dated August 3, 2007 as opposed to specific information concerning Plaintiff's job responsibilities and medical limitations submitted thereafter.

35. This statement is denied; see response to paragraph 24.

36. This statement is denied.

37. This statement is admitted.

38. This statement is denied because, among other reasons, it is argumentative. It is denied that the appeal "attempted to paint a radically different picture…" of the basis for her disability.

39. This statement is admitted.

40. This statement is admitted.

41. Dr. Fantini advised Ms. Baker to "ambulate as much as possible" and "pursue a regular exercise program." It is admitted that Plaintiff needed to move back home because she was out of work and had no income.

42. This statement is admitted. Dr. Ma is a medical doctor.

43. This statement is denied. Plaintiff sought treatment as needed.

44. This statement is denied.

45. This statement is admitted.

46. This statement is denied because it is denied that "Bloomberg had agreed to accommodate the sitting restrictions imposed by Plaintiff's physicians." See Plaintiff's response to paragraph 24.

47. This statement is admitted.

48. It is admitted that Ms. Baker saw Dr. Busono on September 28, 2007 because she was experiencing difficulty in urination as well as blood in her urine.

49. This statement is admitted.

50. This statement is denied.

51. It is admitted that Dr. Busono was not asked and did not give an opinion concerning Plaintiff's work ability.

52. This statement is admitted.

53. It is denied that Dr. Dashevsky's statement was "conclusory." Moreover, Hartford never requested Dr. Dashevsky's treatment records nor advised Ms. Baker that they should be supplied. Moreover, Dr. Nemunaitis contacted Dr. Dashevsky by telephone at which point Dr. Dashevsky provided Dr. Nemunaitis with whatever further information was requested.

54. This statement is admitted. Dr. Dashevsky spoke with Dr. Nemunaitis by telephone and provided him with additional information as requested.

55. This statement is admitted.

56. Again, Hartford never requested any further records nor asked for an explanation about the significance of the condition to her disability. Dr. Dashevsky spoke with Dr. Nemunaitis by telephone and provide him with additional information as requested.

57. It is denied that Bloomberg ever stated that the medical limitations required by the Plaintiff could be accommodated.

58. It is admitted that Ms. Baker was referred to Dr. Schwartzman by Dr. Dashevsky in August 2007.

59. Dr. Schwartzman indicated that while her urinary problems might be due to her underlying spinal problem, "their onset seems unrelated to her spinal surgery."

60. This statement is admitted.

61. It is admitted that Dr. Schwartzman did not indicate one way or the other about the effect of the condition upon Ms. Baker's work ability.

62. This statement is denied. The correct name of the doctor is Dr. Hsueh. He submitted a report dated October 21, 2007.

63. This statement is admitted except for the fact that Dr. Hsueh was misnamed.

64. This statement is denied both because Dr. Hsueh has been misnamed and also to the extent that it suggests that Dr. Wang's opinion is contrary to the other named specialists.

65. It is denied that Plaintiff's explanation of why her job could not be modified in order to accommodate her medical restrictions was "flatly rejected by her employer." As previously indicated, the information provided by Plaintiff's employer was done without the benefit of any medical information having been provided to it about Plaintiff's specific medical restrictions and limitations.

66. It is denied that the review is "independent." The administrative record is devoid of any evidence indicating whether or not Dr. Nemunaitis is independent.

67. There is no indication in the administrative record that Dr. Nemunaitis attempted to contact Dr. Ma.

68. This statement is denied as a mischaracterization. First of all, Dr. Nemunaitis referred to Dr. Ma as Dr. Keyan. Dr. Ma indicated that he needed the Plaintiff's approval before providing private medical information over the phone. Neither Dr. Nemunaitis nor Hartford ever followed up with the Plaintiff. Moreover, Dr. Nemunaitis apparently was unaware of the fact that the Plaintiff had provided an authorization for the release of medical information.

69. This statement is admitted.

70. This statement is admitted.

71. This statement is admitted.

72. It is admitted that Dr. Cooke confirmed that Plaintiff was functioning at a "sedentary" work capacity with sitting limited to 30 minutes at a time.

73. This statement is admitted.

74. This statement is admitted.

75. It is admitted that Dr. Cooke agreed that Ms. Baker could work within the framework of the restrictions and limitations which he had recommended. It is denied that Dr. Nemunaitis in his report outlined the full contents of his conversations with Plaintiff's treating physicians. See Declaration of Dr. Dashevsky indicating the serious omissions in the outline of Dr. Nemunaitis.

76. This statement is denied as a mischaracterization of the reports of Dr. Nemunaitis and Dr. Dashevsky. To begin with, Dr. Nemunaitis left out a large amount of information communicated to him by Dr. Dashevsky. Secondly, Dr. Nemunaitis

indicated that there were no restrictions or limitations associated with Plaintiff's co-morbid conditions. That statement is completely inconsistent with the information provided by both Dr. Hsueh and Dr. Dashevsky.

77. It is admitted that Dr. Nemunaitis wrote something to this effect but did not explain why the MRI's did not support a limitation on Plaintiff's ability to sit. Moreover, Dr. Nemunaitis did not make any conclusions whatsoever about the other problems outlined by Dr. Ma, Dr. Hsueh and Dr. Dashevsky.

78. It is denied that Plaintiff's denial was "in light of all that evidence…" Rather, Hartford's decision to deny benefits was upheld for the reasons set forth in its denial letter dated March 17, 2008. For example, in the letter of March 17, 2008, Hartford wrote that they did not consider all of Dr. Ma's records because Hartford indicated that their review indicated that Ms. Baker did not begin treating with Dr. Ma until September 21, 2007. The appeal denial letter indicates that it was based on the report issued by Dr. Nemunaitis who stated that "There were no restrictions/limitations associated with the claimant's co-morbid conditions that included venous insufficiency and urinary retention."

HAGNER & ZOHLMAN, LLC
Attorneys for Plaintiff

BY: *_/s/ Thomas J. Hagner_*
Thomas J. Hagner, Esq.

Dated: October 15, 2009